

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
VALENTINO JOHNSON,
Defendant.

Case No. 14-cr-00412-TEH

**ORDER RE: HEARING ON
DEFENDANT'S MOTION TO
SEVER**

Counsel shall come prepared to address the following questions at the April 20, 2015 hearing on Defendant's motion to sever:

For Prosecution


1. Would the January 2015 phone calls be admissible in an obstruction proceeding, even though they are outside the timeframe provided in the Superseding Indictment?
2. What is the import of 18 U.S.C. § 1512(g) on Defendant's intended testimony about the obstruction charge? Must Defendant have "foreseen" a federal proceeding when he engaged in obstructive conduct?
3. To what extent will the Government have to re-litigate whether Defendant is guilty of possession in a separate obstruction trial?
4. How would the proposed criminal history stipulation affect the Government's case regarding the armed career criminal enhancement?
5. How does the Government respond to Defendant's concern about the prejudicial nature of evidence relating to the 2011 homicide and 2014 burglary?

For Defendant

1. In this case, why is it not possible for an obstruction trial to take place *before* a possession trial (*e.g.*, what if motions toll the Speedy Trial Act as to the possession count)?
2. Can the Parties edit the jailhouse calls to minimize the jury's exposure to the more graphic elements of these conversations?
3. What is the import of 18 U.S.C. § 1512(g) on Defendant's intended testimony about the obstruction charge? Must Defendant have "foreseen" the federal proceeding, or need the proceeding only have been *objectively* foreseeable?
4. If the Parties stipulate to Defendant's criminal history, why does this not resolve the spillover effect concerns raised in the motion?
5. Can the Court minimize the prejudice of evidence relating to the 2011 homicide and 2014 burglary through jury instructions and/or motions *in limine*?

IT IS SO ORDERED.

Dated: 04/17/15


THELTON E. HENDERSON
United States District Judge